

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

TIMOTHY B. BOSTIC, <i>et al.</i>	)	
	)	
Plaintiffs,	)	Case No. 2:13-cv-00395-AWA-LRL
	)	
v.	)	
	)	
JANET M. RAINEY, <i>et al.</i>	)	
	)	
Defendants.	)	

---

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE LIBERTY COUNSEL,  
INC. IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT WITH  
INCORPORATED MEMORANDUM**

Pursuant to Local Rule 7, Proposed Amicus Curiae Liberty Counsel, Inc. ("Liberty Counsel"), by and through the undersigned attorneys, respectfully moves for leave from this Court to file an amicus curiae brief in support of Defendants' Motion for Summary Judgment. (Dkt. 38). In support thereof, Liberty Counsel avers unto the Court as follows:

**INTEREST OF AMICUS CURIAE LIBERTY COUNSEL**

Liberty Counsel is a national public policy, education, and litigation firm that has been substantially involved in drafting constitutional amendments, Defense of Marriage Acts ("DOMAs"), and defending them in court throughout the country. Liberty Counsel has participated as parties and amicus curiae in 50 or more cases throughout United States involving the definition of marriage.

Liberty Counsel provided amicus briefs in *United States v. Windsor*, 133 S. Ct. 2675 (2013); *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); and many other cases. Liberty Counsel represented Campaign for California Families in *Smelt v. City of Orange*, 477 F.3d 673 (9th Cir.

2006) and in its defense of California's law defining marriage as the union of one man and one woman. *In re Marriage Cases*, 143 Cal. App. 4th 873 (2006).

Liberty Counsel is committed to upholding the institution of marriage as the union of one man and one woman. Liberty Counsel has developed a substantial body of information related to the importance of marriage as the fundamental social institution. Liberty Counsel's substantial experience in litigation involving the traditional definition of marriage will aid this Court in its determination of Defendants' Motion for Summary Judgment. (Dkt. 38).

### ARGUMENT

The constitutional questions before this Court are of monumental importance to not only the Commonwealth of Virginia, but also the United States and society as a whole. Liberty Counsel's expertise in this area of constitutional litigation will provide this Court with substantial assistance in analyzing the significant questions arising here. Liberty Counsel should therefore be permitted to file its amicus brief.

Amicus curiae are generally permitted to participate at the trial level when they *inter alia* "can provide helpful analysis of the law" or "have a special interest in the subject matter of the litigation." *Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007); *Bryant v. Better Bus. Bureau of Greater Md., Inc.*, 923 F. Supp. 720, 727-28 (D. Md. 1996). Additionally, "[a]n amicus brief should normally be allowed when . . . the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *Cnty. Ass'n for Restoration of Env't v. DeRuyster Bros. Dairy*, 54 F. Supp. 2d 974, 974 (E.D. Wash. 1999); *see also Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000) (same).

Generally, courts have exercised **great liberality** in permitting an amicus curiae to file a brief in a pending case, and, with further permission of the court, to argue

the case and to introduce evidence. . . . There are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must **merely make a showing that his participation is useful to or otherwise desirable by the court.**

*United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990) (emphasis added).

Liberty Counsel's unique experience in drafting and defending laws affirming marriage as one man and one woman provides a perspective that would be useful to this Court in resolving the questions presented here. Moreover, Liberty Counsel's experience litigating and defending cases involving the protection of the definition of marriage as the union of one man and one woman gives it a significant and unique perspective capable of providing substantial information to this Court. This information will certainly "provide supplementary assistance to existing counsel" and "insur[e] a complete and plenary presentation" of the issues presented here. *Alexander v. Hall*, 64 F.R.D. 152, 155 (D.S.C. 1974). Liberty Counsel's interest in protecting and upholding the traditional definition of marriage also gives it a special interest in the subject matter of this litigation. Liberty Counsel drafted and defended Florida's Marriage Protection Amendment. Liberty Counsel attorneys have written and spoken extensively regarding the marriage laws. Liberty Counsel's brief will provide this Court with information vital to the defense of the traditional definition of marriage, including the fundamental purpose of marriage as procreation, the inherent need of both a male and a female to optimize the upbringing and development of children, the essence of traditional marriage as the quintessential social institution, and the compelling interest all governments have in protecting the traditional definition of marriage.

Liberty Counsel's motion to file an amicus brief is also timely and will not prejudice the existing parties. *See Tafas*, 511 F. Supp. 2d at 659 ("courts have accepted [amicus briefs] as timely even when filed 'on the eve of summary judgment motions'") (quoting *Cnty. Ass'n for*

*Restoration*, 54 F. Supp. 2d at 975-76). Therefore, Liberty Counsel's Motion to participate as amicus curiae should be granted.

### **CONCLUSION**

For the foregoing reasons, Liberty Counsel respectfully requests that this Court grant its Motion for Leave to File an Amicus Brief.

Respectfully submitted,

/s/ Mary E. McAlister

Mary E. McAlister, Va. Bar No. 76057

Mather D. Staver\*

Rena M. Lindevaldsen, Va. Bar No. 70697

Richard L. Mast, Va. Bar No 80660

LIBERTY COUNSEL

100 Mountain View Rd., Suite 1845

Lynchburg, VA 24502

Phone: (434) 592-7000

Fax: (434) 592-7700

Email: court@lc.org

*Attorneys for Proposed Amicus Curiae Liberty Counsel*

*Pro Hac Vice Motion Pending*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically with this Court on January 23, 2014, which caused all attorneys of record to be served.

/s/ Mary E. McAlister  
Mary E. McAlister, Va. Bar No. 76057  
LIBERTY COUNSEL  
100 Mountain View Rd., Suite 1845  
Lynchburg, VA 24502  
Phone: (434) 492-7000  
Facsimile: (434) 592-7700  
Email: court@lc.org